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NEPA Draft Report Comments
C/o NEPA Task Force
House of Representatives Committee on Resources
1324 Longworth HOB
Washington, DC 20515

Dear Representative McMorris:

On behalf of Public Lands Advocacy, the Petroleum Association of Wyoming, Montana Petroleum Association, American Association of Professional Landmen, Independent Petroleum Association of America, Independent Petroleum Association of Mountain States, International Association of Geophysical Contractors, North Dakota Petroleum Council, Western States Petroleum Association, and their members, following are comments and recommendations regarding the *Initial Findings and Draft Recommendations of the Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act (NEPA).* Member companies of the oil and gas associations identified above all have had broad, direct experience with the NEPA process and have a vested interest in how NEPA procedures are implemented or revised. Moreover, several provided testimony before the NEPA Task Force during field hearings held on this issue.

Before providing comments on the draft recommendations, it is important to point out that the petroleum industry fully supports the intent of NEPA and is committed to meeting its requirements. Based upon our experience with the law, we have found NEPA itself reasonable, as well as its implementing CEQ regulations. The problems with NEPA largely lie with agency implementation of the law and rules, which have become extremely problematic over the course of the last two decades. Federal agencies don't view the NEPA process as a decision-making tool for federal land and resource managers and administration policy makers. Rather, NEPA has been viewed as a requirement for agencies to develop litigation proof documents or an opportunity for federal agencies to acquire new land and resource information at the expense of project sponsors.

In an attempt to respond to relentless court challenges, federal agencies typically exceed NEPA requirements by trying to prepare so-called "appeal (or bullet) proof" environmental impact statements (EIS) and environmental assessments (EA). These attempts have led to extremely costly and usually, excessively broad studies, i.e., inventories and analyses, which result in cumbersome and complex documents. As a result, it is literally impossible for the general public to understand these analyses. It should also be noted that it is also difficult for <u>other</u> more experienced parties to analyze and review the documents due to their enormous volume and the time-consuming nature of their review. Of great importance to our members, who rely upon timely preparation of EAs and EISs, there has been no change in the number and types of appeals filed by interest groups even after this expanded level of analysis and documentation has been undertaken. While legal challenges usually attack the procedural components of NEPA, it is our view that the real objective of such challenges is

to halt or, at a minimum, severely delay oil and gas exploration and development activities on public lands.

Emergency Situations

A crucial issue that was not raised during the field hearings the Task Force held on NEPA, but which must be addressed legislatively, relates to the need for expedited development and distribution of oil and gas resources during times of crisis, i.e., natural disasters, embargoes or acts of war, which can dramatically impact the nation's ability to meet its energy needs. The need for this type of relief became clearly evident this past year with the advent of Hurricanes Katrina and Rita, during which countless oil and gas facilities were destroyed causing a major disruption in supply. As such, we recommend the adoption of an "emergency" clause that would suspend NEPA requirements when it is in the nation's best interest. Such a program would not eliminate environmental protection measures provided for in regulations and operating practices, but would provide the opportunity to replace needed facilities and services without the delays associated with NEPA compliance.

Group 1 – Addressing Delays in the process Comments on this Grouping are presented by priority.

Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS)

As indicated by the report, the Task Force recognizes that delays in the NEPA process are of critical concern. From the perspective of the petroleum industry, delays constitute the single most problematic aspect of permitting of oil and gas wells and rights-of-way on public lands. Congress recognized this issue by adding Section 390 to Title III of the Energy Policy Act of 2005, which established five new categorical exclusions (CE) for certain oil and gas activities on public lands. To further facilitate the reduction of delays in the NEPA process, we strongly support the intent of Recommendation 1.3. However, we believe the intent should be accomplished through rulemaking rather than a legislative fix.

Following are several additional actions that warrant a CE from complex NEPA analysis which could be established in criteria.

- Eliminate the 30-day public posting requirement when drilling a new well on an existing pad, even when a new APD is required, when no new surface disturbance is required outside the previously approved drill pad
- Casual uses that do not result in long-term surface disturbance, such as geophysical activities
- Emergency repairs of existing facilities or equipment necessary to maintain production or which involve well control or public safety issues
- Fire control measures, including equipment mobilization and activation
- Requests for exceptions or modifications to existing lease stipulations when no new surface disturbance would result
- Issuance of leases where lands are included in a federal unit
- Approval of an application for a permit to drill (APD) related to onsite remediation efforts of groundwater or soils
- Sundry notices associated with
  - Routine workovers

  - Routine hydraulic fracturing to improve production or injection
- Disposal of produced water in accordance with State or federal regulatory requirements
- Minor modifications or variances from activities described in approved development or production plans
- Unitization, communitization and drainage agreements or development contracts
- Maintenance and installation of new equipment on gathering line facilities, such as compressors, when there is no additional surface disturbance or when the surface disturbance is less than 2 acres.

Recommendation 1.4: Amend NEPA to address supplemental NEPA documents.

We support the intent of this recommendation. However, refinement of procedures for tiering to and incorporation of previously prepared documentation would be better accomplished through the existing rulemaking process. Duplicative environmental documentation is a significant problem. Specifically, when a supplement to an EIS is deemed necessary, agencies often choose to initiate a whole new analysis rather than limiting it to the new issues that need to be addressed in the supplemental analysis. This practice is wasteful, costly and not the intent of NEPA. Supplemental analyses by their very nature are simply meant to provide additional analysis of actions either missing or altered from the original EIS. This problem can be resolved through the rulemaking or administrative policy process and does not require new legislation.

Another concern related to this issue is that it has become routine for agencies, particularly BLM, to request industry to fund not only field development environmental analyses, but also analyses for smaller projects (e.g. small coal bed natural gas exploratory projects), or resource surveys, such as those for threatened and endangered species and cultural resource surveys. Whether agencies or industry funds environmental analyses, it is in the best interest of both parties to work together and focus on compliance with CEQ regulations at 43 CFR 1500-08. Specific recommendations are as follows:

- EISs and EAs need to utilize and incorporate all available relevant data to avoid unnecessary research and associated delay, controversy and expense in subsequent NEPA analyses. Barring any significant changes in resource conditions, a simple checklist should be used in place of an EA for small projects. For larger projects, an EA focusing only on those issues not previously addressed in the programmatic analysis is all that is necessary.

- We recommend that all scientific data used be limited to that which has been peer-reviewed or derived on site to ensure its accuracy and objectivity. Moreover, the applicability of the data to the area involved in planning or other NEPA analyses must be clearly demonstrated. There have been many instances where studies from another part of the country are used to make decisions even though conditions are not the same as those addressed in the studies.

- The Forest Service and BLM use various methods for mapping resources, such as the occurrence of wildlife habitat, winter range, plant communities, archaeological sites, etc. It is essential that all offices upgrade their mapping systems by utilizing GIS technology. GIS technology facilitates federal decision making and provides industry with information required to address resource concerns at the project planning stage as well as during operations. Even more important, GIS data can readily be shared between federal agencies to ensure a common database for

management and reporting purposes, for example, status and trend of endangered species or their habitat.

Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents

Mandatory times for completion of NEPA documents would be a positive action. However, it must be recognized that a wide array of issues affect time frames of NEPA compliance. Therefore, in order to meet the proposed deadlines, many improvements in the process must be implemented by the agencies. Expanded use of existing documentation and elimination of duplication in the analyses would go a long way toward reducing time frames. Elimination of stand-alone documents such as hazardous waste plans (already required by 40 CFR) would reduce the size of the document. Plans such as wildlife monitoring and transportation should be required post-ROD to reduce the size of and time required for the documents. Currently, the agencies routinely use an EIS format for EAs, creating unnecessary analysis, delay and expense. Recommendations that would help agencies meet such time frames are identified below:

- Project specific work plans are needed before initiation of the analysis to ensure better coordination among the contractor, project proponent and the lead agency. This would provide each party with set goals and objectives and an understanding of work products required with respect to resource data needs, time frames, procedures and communication. Detailing of such duties is crucial in order to ensure a smooth analysis process.

- Eliminate analysis of speculative situations, infeasible, or uneconomic alternatives.

- Although NEPA requires the use of the best available information in an analysis, a widespread belief exists among agencies that current information (e.g., mule deer populations and habitat trends) in their possession (or residing with sister agencies) is inadequate, incomplete or unreliable. Federal agencies essentially force project sponsors to acquire new information through third party contractors during analysis of a proposed project. Agencies must be required to coordinate with and utilize all available data existing in their sister agency files and reports.

- Agencies need to limit the scope of analysis to the project at hand instead of seeking to collect and analyze data that is not relevant to a project. Some field offices relentlessly revise information requirements for the analysis throughout the process, creating unending delays and increased expenses.

- NEPA documents should present scientifically valid information and avoid speculation. NEPA documents should be written for the general public in a clear, concise and informative manner, highlighting the decision being made and the justification for that decision. Technical documents can be referenced or included in an appendix. More weight in the EA or EIS does not mean a more rigorous analysis has been performed.

- A restructured format for EAs is needed. Currently, the agencies use an EIS format for EAs, creating unnecessary analysis, delays, and expense. NEPA instituted a tiered process for environmental documentation. Clearly, Congress never envisioned the same level of analysis and public involvement for both EAs and EISs. The fact that an EA is also used to determine the need for an environmental impact statement clearly indicates the EA was intended to be a less complex document but still comprehensive enough to make a stand-alone decision.

- It is desirable for information to be presented only once in the document. Using the descriptions of the alternatives as an example, agencies characteristically repeat much of the same information under each alternative. We recommend that all the pertinent data be included in the description of the preferred alternative and that duplication of this data be eliminated from the discussion of other alternatives. The same holds true for the discussions of alternatives and environmental consequences. The chapter on alternatives needs only to address information relevant to management goals, objectives and requirements. The chapter on environmental consequences needs only to address the consequences associated with these goals, objectives and requirements.

- Limit the narrative in the EIS on the affected environment to a summary of a technical document which would be part of the administrative record and focus the EIS on a discussion of the environmental consequences of the proposed action, acknowledging the use of mitigation measures, best management practices and other operating standards.

- Ensure that personnel assigned to manage NEPA projects have been adequately trained. Currently, NEPA projects are often assigned to the least experienced person in the office. Such "on the job training" has resulted in serious delays, mistakes and excessive analyses.

- Steps need to be taken to ensure federal agency compliance with the clear intent and purpose of NEPA. Industry encourages the development of agency performance and accountability metrics to ensure better and more consistent compliance with NEPA and to inform the public and the Congress.

- Federal agencies need to establish monitoring as a high priority after implementation of land use plans and projects to ensure proper balance between resource protection and production. New information gained from monitoring can be used to ensure the use of appropriate conditions of approval and to reduce reliance on risk avoidance stipulations such as the No Surface Occupancy stipulation which is extensively used throughout the onshore leasing program. Active monitoring will help assist development of local, flexible, science-based land and resource management strategies. However, all monitoring must be analyzed by the federal agency in a timely fashion. Monitoring without analysis is a huge waste of time and money. The agencies need to budget for the analysis just as they do for all other activities of the staff.

- Agencies need to recognize technology-based tools are still being developed for impact modeling, estimating carrying capacity, assessing cumulative impacts, and testing the effectiveness of mitigation. There is no question progress using these tools will improve decision-making but the search for "better information" should not prolong project decisions. Uncertainty needs to be acknowledged, mitigation measures need to be identified and used, and agencies must fulfill commitments to monitor and adapt management tools as resource plans and projects are implemented.

<u>Recommendation 1.1: Amend NEPA to define "major federal action"</u>

An adequate definition exists in the CEQ NEPA regulations under 40 CFR 1508.18, Major Federal Action. This definition describes not only what constitutes a major federal action but also provides

direction on determining the significance of the action. Therefore, there is no need to revise the definition in new legislation.

Group 2 – Enhancing Public Participation

Recommendation 2.1: Direct CEQ to prepare regulations giving weight to localized comments.

While we understand the frustration of some local groups' lack of consideration in past NEPA processes, the Department of Interior remedied this error by instituting a new rule in March 2005 that amended its planning regulations to ensure that staffs at all levels – state office or field office – engage their governmental partners consistently and effectively through the cooperating agency relationship whenever land use plans are prepared or revised. To facilitate implementation of the new rule, BLM issued in May 2005, *A Desk Guide to Cooperating Agency Relationship* Information (Bulletin No. 2005-126*).* Local officials represent local interests and there is no need to change NEPA to require CEQ to require federal land managers to weigh local comments more than others since local interests will be part of the actual NEPA process.

Additionally, it must be acknowledged that public lands are utilized by others not from the local community. The oil and gas industry, for example, moves from one location to another in order to provide the goods and services relied upon by local communities and the nation alike. We are concerned that if less weight were given to industry's views it would further impede already difficult decisions on access for oil and gas leasing and development. It would be preferable for the agencies to weigh the substance of the comments rather than the postmark. Postcard campaigns, even locally generated, should not warrant special attention in the NEPA process. We oppose this recommendation for the above stated reasons.

Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7.

This recommendation is closely aligned with Recommendation 1.2, Mandatory Time Frames. In order to accomplish this goal, many changes to the NEPA analysis procedures would be required. Please see our comments under Recommendation 1.2.

Group 3 – Better Involvement for State, local and Tribal Stakeholders

Recommendation 3.1: Amend NEPA to grant tribal, state and local stakeholders cooperating status

As stated in our comments on Recommendation 2.1, BLM has already established procedures for ensuring state, county and tribal stakeholders are invited to participate in the NEPA process. We do not support the inclusion of local non-governmental entities in the NEPA process with cooperator status because it would needlessly exacerbate polarization in the process. We offer the following recommendations to facilitate the process:

- Institute a mandatory 30-day time frame for responding to invitations to become a cooperator. In some instances, certain government agencies have never bothered to respond to an invitation to become a cooperator. Moreover, a set response time is necessary to ensure new cooperators are not allowed to join the process after decisions have been made as to the scope and intent of the analysis and the majority of the study has been completed. If the process requires participation of

cooperators, it must be limited to those who have a commitment to working with the agency(s). Furthermore, any rule or statutory changes must avoid delays in the process.

- Limit "local stakeholders" to government entities rather than a "citizens' interest group." It has been our experience that the goal of many NGO groups is to stymie the process rather than facilitate it. Clearly, involvement of local or tribal government entities broadly accountable to their respective constituents will provide the input necessary to ensure local issues are addressed and resolved.

- Direct agencies to annually report their compliance to Congress with applicable executive orders (e.g. permit streamlining and energy impact assessments).

- Require expanded and improved use of Memoranda of Understanding (MOUs) to facilitate coordinated agency reviews of resource reports and concurrent comment periods.

- Require cooperative consultation among agencies while an EIS is being prepared instead of allowing them to submit adversarial comments on or objections to draft or completed documents.

- As part of a cost-benefit analysis for energy projects, require an assessment of impacts on domestic energy supplies and the economy if the project does not proceed.

Recommendation 3.2: Direct CEQ to prepare regulations that allow existing state environmental review processes to satisfy NEPA requirements

Regulations at 43 CFR 1506.2 adequately address this issue; therefore no new legislation is required.

Group 4 – Addressing Litigation Issues

Recommendation 4.1: Amend NEPA to create a citizen suit provision

We support most of the components of this recommendation. In our view, seemingly endless lawsuits have posed one of the greatest problems associated with NEPA. We believe the Task Force and Congress could help assuage this problem by instituting a 6-month statute of limitations for citizen suits. The following comments address existing components that require clarification as well as additional elements we believe are necessary:

- *Require appellants to demonstrate that the evaluation was not conducted using the best available information and science.*

  We strongly support this recommendation.

- *Clarify that parties must be involved throughout the process in order to have standing in an appeal.*

  We support this recommendation even though it may already have been established through case law.

- *"Prohibit a federal agency – or the Department of Justice acting on its behalf – to enter into lawsuit settlement agreements that forbid or severely limit activities for businesses that were not part of the initial lawsuit."*

  This recommendation is vague and should be clarified or eliminated.

- *"Establish "clear guidelines" on who has standing to challenge an agency decision…"*

  Most citizen suit provisions are very broad. In addition to shortening the statute of limitations for citizen suits, it is also essential to narrow the universe of potential challenges to major agency decisions.

  Because of decisions of the Ninth Circuit Court of Appeals, it is especially important that any citizen suit provision allow entities having an economic interest in a proposed action to participate in litigation related to that proposal. In the Ninth Circuit States, which include California, Nevada, Arizona, Montana, Idaho, Alaska, Washington, Oregon, and Hawaii, an individual or entity that has only an economic interest in an agency decision does not have standing under NEPA. *See Portland Audubon Soc. v. Hodel*, 866 F.2d 302, 309 (9th Cir. 1989). As a result of this narrow definition of standing under NEPA, the interests of the oil and gas industry may not be represented in litigation in these states challenging agency decisions based on EAs or EISs. Moreover, as a general matter, the current law does not ensure representation of all viewpoints and interests in NEPA litigation. A citizens' suit provision in NEPA can cure this disparity by defining standing to ensure that proponents of federal actions can initiate and intervene in NEPA litigation. Therefore, the Task Force should incorporate language into a citizens' suit provision that permits proponents of federal actions and other persons having an economic interest in a proposal to participate in litigation challenging the action.

- *"Establish a reasonable time period for filing the challenge…within 180 days of notice of a final decision…"*

  We strongly support a time limit for filing litigation on programmatic decisions. However, providing six months (180 days) for litigation on project proposals would create significant difficulties for project proponents. Many federal project level decisions are subject to "full force and effect" upon issuance of the decision, which is proper and which we strongly support. It is important to recognize that in most cases, projects will have begun much sooner than the 180 days provided for in this recommendation. Litigation that includes a request for a temporary restraining order would cause an enormous financial and technical burden upon a project proponent. We recommend the time frame for challenging site-specific projects be changed to 30-days. Provision of a 30-day time period would better serve the public and project proponents, as well as the federal agencies.

Recommendation 4.2: Amend NEPA to add a requirement that agencies "pre clear" projects

The title of this recommendation indicates that projects would be pre-cleared by agencies; however, the explanation indicates that CEQ would become a clearinghouse for monitoring court decisions that affect procedural aspects of preparing NEPA documents. We support the recommendation that CEQ monitor court decisions and assess their effect on NEPA procedures. Since it is unclear as to

what constitutes "pre clearing" of projects, we recommend this the title of this recommendation be changed to comport with the explanation.

Additional recommendations are discussed below:

- Amend NEPA to require appellants to post a bond to cover any fees and the lost value of a project if they fail to prevail in litigation.

- We recommend that Congress modify and codify the following regulation at 43 CFR 3150.2 (b) to apply to litigation of project decisions as follows:

  "All decisions and approvals of the authorized officer under this part shall remain effective pending appeal unless the Court determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of the authorized officer under this part. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Court and shall show sufficient justification based on the following standards:

  1) The relative harm to the parties if the stay is granted or denied,
  2) The likelihood of the appellant's success on the merits,
  3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and
  4) Whether the public interest favors granting the stay.

  Nothing in this paragraph shall diminish the discretionary authority of the authorized officer to stay the effectiveness of a decision subject to appeal pursuant to paragraph (a) of this section upon a request by an adversely affected party or on the authorized officer's own initiative. If the authorized officer denies such a request, the requester can petition for a stay of the denial decision by filing a petition with the Court that addresses the standards described above in this paragraph."

Group 5: Clarifying Alternatives Analysis

Recommendation 5.1: Amend NEPA to require that "reasonable alternatives" analyzed in NEPA documents be limited to those which are economically and technically feasible *and related to the specific project under analysis*."

We strongly support this recommendation with our added language because it would eliminate the many unnecessary, wasteful analyses that have historically been conducted. CEQ requirements to disclose potential environmental effects and identify mitigation measures to reduce or eliminate anticipated effects have often caused federal agencies to adopt the most conservative, risk adverse alternatives, criteria and strategies, which results in the search for unreasonable or infeasible alternatives as discussed previously. Development of alternatives to a proposed action has typically been reduced to a search for alternatives without regard for how unreasonable or infeasible those alternatives may be, or, whether there is any associated environmental or cost benefit.

In order to ensure reasonable and feasible alternatives are selected for analysis, we recommend that Congress include a provision in NEPA that allows project proponents to be involved in alternative

development and selection. Currently, project proponents are excluded from participating in this process, which has led to the selection of infeasible and unreasonable alternatives. Consequently, project proponents have been forced to appeal or litigate their own NEPA analysis and Record of Decision, creating an untenable situation for both the agency and project proponent while also subjecting the process to additional, unnecessary delays and costs.

A new issue has come to light with the advent of hiring consulting firms to prepare Land Use Plans. It has come to our attention that in order to prepare plans within an established budget, consultants are limiting the analysis to four alternatives. While this may sound reasonable, it is not always beneficial because it severely limits the BLM's management options. For example, one alternative would carry forward the current management actions, the second alternative would attempt to show the effects of oil and gas operations without restrictions, the third alternative would reveal an attempt to reconcile potential conflicts, and the fourth alternative would be the preservation or most restrictive management alternative. Clearly, only one of these alternatives would be viable as a preferred alternative, Alternative 3, which gives BLM only one management option. The problem is that in order to demonstrate an adequate range of alternatives, the third alternative is packed with a full array of management tools, not all of which be suitable to facilitate reasonable multiple use activities, such as grazing, oil and gas exploration and development and motorized recreation. At least one additional alternative is needed in order to allow BLM the flexibility required to address the needs of all uses on public lands.

Recommendation 5.2: Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on any proposed project.

We support disclosure of the impacts of not moving forward with a proposed project. It would be beneficial for the agency to determine whether the consequences of not approving a project would outweigh the perceived impacts. To strengthen this recommendation, we suggest the following addition: "Amend NEPA to clarify that the analysis must include consideration of the social, economic and environmental impact…" This is an important addition because historically agencies have completely failed to analyze or even acknowledge the negative social and economic impacts of prohibiting certain uses from taking place on public lands. In addition, we suggest that Congress require an assessment of economic impact in terms of local, state and federal revenue gained or lost as a result of increased restrictions or actual withdrawal of lands from commercial activities. With respect to oil and gas, we recommend that agencies be required to assess the impacts of restrictions and withdrawal on domestic energy supplies.

It is not clear whether an "extensive discussion" of the no action alternative is necessary. We believe a simple paragraph explaining the decision to reject the alternative if the impacts of not undertaking a project or decision would outweigh the impacts of executing the project would suffice. We are concerned that an "extensive discussion" would add time, complexity and costs to a NEPA analysis.

Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposals mandatory.

This approach is unnecessary. It would change completely the focus of NEPA, making it a substantive statute rather than one that provides procedural guidance. It is troublesome because mitigation techniques and production technology are constantly changing and improving. If a specific mitigation measure has been required in a NEPA document, it would be difficult to revise

without forcing an amendment of the document. This process would be costly and time consuming, especially given the fact that mitigation is already a requirement on all projects.

43 CFR, Sections 1502.14 (f) and 1502.16 (h) of the Council on Environmental Quality NEPA regulations require mitigation measures to be identified in the EIS that may be employed to reduce or entirely avoid impacts to other resource values. The problem with implementation is that this direction has been construed to mean that only lease stipulations need to be identified. While we agree it is necessary to identify other types of mitigation which may be utilized at the time of oil and gas drilling, both exploration and development, such as area-wide standards and guidelines for oil and gas operations, flexibility in making changes must be assured. Since this direction is already contained in the regulations, new agency guidance is preferable rather than a legislative fix.

Group 6 – Better Federal Agency Coordination

Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with project proponents

Regulatory requirements already provide for a wide spectrum of opportunities for involvement of the general public (stakeholder) in the NEPA process and increased opportunities are unwarranted. For example for an environmental impact statement, there is the public scoping process, which includes public meetings and hearings; public review of the proposed alternatives, public comment on the draft EIS, review of the final EIS and, of course, the protest or appeal process. There is no need to expand public participation opportunities; nor is there a need to increase public involvement to include environmental assessments that result in a "finding of no significant impact" or "categorical exclusions" from NEPA review because neither of these actions results in significant impacts to the human environment.

The genesis of the demand for more "stakeholder" involvement in the land use planning process appears to stem from special interest groups that do not support federal decisions allowing multiple-use activities on public lands. In an effort to ameliorate this opposition, agencies have chosen to initiate collaborative decision-making in certain areas. Rather than achieving successful outcomes, these attempts have become particularly bogged down with little or no hope of consensus. Despite years of trying to resolve differences among the various parties, it has come become apparent that basic philosophical differences cannot be surmounted. In order to successfully manage this polarization, agencies must bear the ultimate responsibility regarding land use decisions and the ability to cut off public involvement when no consensus is in sight.

While involvement of the general public stakeholder is adequate, as mentioned previously in these comments, increased opportunities for involvement by industry are vital. As a result of the limits imposed on oil and gas industry involvement in the land use planning process it has been demonstrated that the planning analysis can become severely out of date before it is even completed. Not only do project economics and circumstances change, but dynamic technological advancements may not be considered until the next public input opportunity arises, which is often upon release of the draft environmental impact statement. This has proven to be a serious problem with respect to oil and gas exploration and development segments of land use planning. As has been demonstrated in the most recent planning efforts, changing market conditions have caused land use plan projections to be seriously inadequate. Specifically, rising natural gas prices have made increased exploration and development more economically feasible, causing RFD projections contained in these plans

obsolete. Situations such as these could be easily avoided if industry were given increased opportunities to be involved in the process. Clearly it is crucial for periodic updates of resource conditions or needs to be incorporated into the analysis to avoid having to revise the draft or prepare a supplement to the EIS.

Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies

It is our view that the current regulation is adequate and that while fine-tuning of the regulation may be in order, no legislative change is required. Changes that should be implemented through regulatory updates must address the need for federal agencies to adopt consistent, compatible and technically rigorous standards and protocols for obtaining, managing and reporting data used in NEPA analyses. It is also necessary for agencies to adopt common procedures, data elements, land scales and graphic symbols for each resource element to ensure cross boundary compatibility in data acquisition, analysis, synthesis and reporting. In addition, an interagency data management tool should be established that would provide for systematic documentation and archiving of all inventory, monitoring and research data. Such data should be easily retrieved by each agency for use in land management planning, resource stewardship, training, and preparation of project-level NEPA documents.

Group 7: Additional Authority for the Council on Environmental Quality

Recommendation 7.1: Amend NEPA to create a "NEPA Ombudsman" within the CEQ

We strongly support the concept of a NEPA Ombudsman within CEQ. It is our recommendation that an Ombudsman oversee all projects on federal lands to ensure they meet the intent of NEPA. Currently, there is no accountability within the agencies to ensure NEPA requirements are carried out correctly and efficiently. Moreover, there have been problems with respect to interagency cooperation and consistency during the NEPA process that could be resolved by a CEQ NEPA Ombudsman. A valuable service that could be accomplished by a NEPA Ombudsman could be mediation of disputes between or among agencies. In addition, we recommend that the Ombudsman also help mediate disagreements between project proponents and agencies with respect to identification of alternatives, mitigations measures and resource surveys.

Another function of the NEPA Ombudsman could be to assist each federal land management agency in developing a consistent accountability process for responsible management and for ensuring designated NEPA tasks are accomplished in an efficient, cost-effective and timely manner. As such, measures of success need to be established that provide for clear standards by which actions can be planned, expectations evaluated and accomplishments measured. Such an accountability system would help make the NEPA process more productive and cost effective.

Recommendation 7.2: Direct CEQ to control NEPA related costs

This is an intriguing concept and we recommend that it be expanded to include industry-funded NEPA projects. While it is the federal agencies' statutory obligation to conduct NEPA analysis for projects on federal lands, the petroleum industry has stepped up to the plate with funding in order to ensure these projects are accomplished in a timely manner. Coupled with guidance on how to streamline the NEPA process, we support CEQ taking an active role in curbing NEPA costs.

Group 8 – Clarify meaning of "cumulative impacts"

Recommendation 8.1: Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts

The current 43 CFR 1500 regulations provide clear guidance on how to correctly consider past actions in the cumulative effects analysis. As a practical matter, the "Affected Environment" analysis required under NEPA already effectively addresses past actions. We are concerned that additional evaluation of "past actions" could result in future users being held accountable for earlier actions. This is a realistic concern because in previously proposed land use planning rules promulgated by the US Forest Service, it was indicated that the agency intended to attempt bring ecosystems back to "pre-colonial" conditions. Clearly such an approach is inappropriate. We recommend the current NEPA regulations.

Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis.

While we recognize the need to refrain from predicting unsupportable reasonably foreseeable actions in the NEPA process, as discussed earlier under Recommendation 6.1, the petroleum industry relies upon "reasonably foreseeable scenarios" (RFD) as the means to continue exploration and development activities on public lands once a land use plan has been completed. The RFD considers geology and other factors that affect oil and gas activity, such as economics, changes in exploration, drilling, completion or production technology, physical limitations affecting surface access, bid performance at lease sales, oil and gas related infrastructure, and transportation. It is intended that these factors provide a forward view of the level of land use expected to take place and allows the government to evaluate these expectations in terms of cumulative effects and mitigation measures.

Ideally, RFDs are based upon information provided by oil and gas operators active in the area. It must be noted, however, that there is no process for ensuring these RFDs are kept up to date during the 3 to 10 year federal land use planning process. Consequently, as has been experienced in Rawlins, WY and Vernal and Price, UT, market conditions and technology have dramatically changed since the time the RFDs were prepared. As a result, the RFDs have proven inadequate which could require a plan amendment nearly immediately. As recommended under Recommendation 6.1, it is necessary for the agencies to reevaluate the RFDs periodically during the planning process to ensure they are still reflective of future activities. This could be reasonably accomplished by consulting with the oil and gas industry during the process.

Group 9 – Studies

Recommendation 9.1 – CEQ study of NEPA's interaction with other federal environmental laws

We support a study that evaluates how NEPA and other environmental laws interact and the amount of duplication that takes place. Duplication is a serious problem within the NEPA process.

Recommendation 9.2 – CEQ study of current federal agency NEPA staffing issues

We strongly support this recommendation. Nearly 75% of the cost to industry and BLM of processing drilling permits is related to NEPA and field offices with larger volumes generally have lower unit costs. Approximately 30% of the BLM oil and gas budget is devoted directly to approval of drilling and workover operations.

We concur with the proposal to have CEQ conduct and periodically update workload analyses to determine the appropriate size and composition of the workforce needed to efficiently process APDs. This should include whether existing resources could be better deployed, what the highest priority needs are for additional positions, and what work would be accomplished with the resources. The use of cooperatively funded positions (with SHPO, USFWS, and the oil and gas industry) and third party contractors (funded by BLM, industry, or jointly) have all been effectively used in the past and guidance should be issued to encourage their use in the future. An additional element we recommend including is an overview of the adequacy of current training programs and an evaluation of the competency of NEPA team leaders.

Recommendation 9.3 – CEQ study of NEPA's interaction with state "mini-NEPAs" and similar laws

We support initiation of such a study. As pointed out under section 3.2, only two Western states currently have their own environmental review processes, Montana and California. We would support utilizing state analyses to avoid a duplication of efforts. The proposed study could evaluate the efficiency of such an approach.

We appreciate this opportunity to provide you with our comments. Please do not hesitate to contact Claire Moseley should you have any questions regarding our views and recommendations.

Sincerely,

Claire M. Moseley